

Amendment under 37 C.F.R. §1.111
Attorney Docket No. 052485
Application No. 10/532,077

REMARKS

Claims 3-11 are pending in the present application. Claims 6 and 8 are withdrawn from consideration. Claims 6, 7, 10 and 11 are herein amended. No new matter has been presented.

Applicants gratefully acknowledge that claims 10 and 11 recite allowable subject matter. Claim 10 has been amended into independent form.

Claim Rejections - 35 U.S.C. § 112

Claims 3-5, 7 and 9-11 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Office Action stated that the term “the food storing article composition” lacks an antecedent. Claim 7 has been amended for clarification.

Withdrawal of the rejection under § 112 is requested.

Claim Rejections - 35 U.S.C. § 103

Claims 3-5, 7 and 9 were rejected under 35 U.S.C. § 103(a) as being unpatentable over **Xiang** (CN 1146303) in view of **Okada** (US 5,985,303).

Favorable reconsideration is requested.

Claim 7 has been amended such that it is in better condition for allowance as suggested in the Office Action at page 9, *i.e.*, claim 7 recites a humidity-dependent antibacterial food storing article, “the food storing article comprising a resin into which a humidity-dependent antibacterial powdery composition has been mixed, said humidity-dependent antibacterial powdery composition comprising.”

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(1) Applicants respectfully submit that it would not have been obvious to one of ordinary skill in the art to combine the teachings of Xiang and Okada.

Xiang discloses reducing volatile loss of spice flavoring oil food product for flavor preservation and the use of microencapsulation to achieve the reduction in volatile loss, *i.e.*, Xiang teaches preventing the release of spice flavoring. Okada discloses a food packing material including isothiocyanate ester which must be released to preserve freshness of food, *i.e.*, Okada teaches purposely releasing isothiocyanate ester.

The purpose of the microencapsulation in Xiang is to prevent volatile loss of spice flavoring oil food product for flavor preservation. Even though ultimately some volatile loss occurs in Xiang, the goal of Xiang is to prevent this loss. This is demonstrated in the Examples in Xiang where retention rates of as high as 97% were achieved. (Xiang, pages 8-12.) One of ordinary skill in the art would understand that this “high storage tolerance” taught in Xiang is not the same mechanism as in Okada which requires a constant rate of emanation and *an effective concentration* for maintaining freshness of food. When viewing the references as a whole, one of ordinary skill in the art would not combine the teachings of a “high storage tolerance” and high retention rates as taught in Xiang with a food packaging material including isothiocyanate ester which must be released to preserve freshness of food.

(2) Even if Xiang and Okada can be combined as alleged in the Office Action, the combination would not teach “A humidity-dependent antibacterial food storing article” and “the behavior of release of the antibacterial substance changes depending on humidity ... said volatile oily antibacterial substance is an isothiocyanate ester” as recited in amended claim 7.

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The alleged modified product of Xiang and Okada would require the packaging material of Okada. Based on the teachings of Xiang and Okada as a whole, to form an item capable of functioning as a food storing article, one of ordinary skill in the art would have to use the teachings of the packaging in Okada. The packaging material in Okada is formed by using the matrix to entrap the isothiocyanate acid compound by adsorption, and then packaging the matrix and isothiocyanate acid compound in a synthetic resin or a nonwoven packaging material. (Col. 3, line 64 to col. 4, line 9.) This alleged modified product of Xiang and Okada having the packaging material of Okada would allow the release of isothiocyanate irrespective of humidity as demonstrated in the Declaration submitted November 12, 2008. When the isothiocyanate is adsorbed with a matrix (xanthane gum) as in Okada, the isothiocyanate is released irrespective of humidity.

Regarding claim 9, Applicants note that further structure of the food storing article is recited, and thus, it is not reasonable to interpret the food storing article as merely being an intended use. Assuming that Okada is cited for teaching a packaging (since Xiang does not teach such a packaging), Applicants again note that the declaration submitted November 12, 2008 demonstrates that the packing material of Okada allows the release of isothiocyanate irrespective of humidity.

Regarding withdrawn claims 6 and 8, Applicants request that these claims be rejoined with the elected claims. Claims 6 and 8 depend from claim 7. In addition, claim 6 has been amended to recite “a process for producing a humidity-dependent antibacterial food storing

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article" and to add a step of "mixing the powder composition in a resin which is formed into or coated onto an article" as suggested in the Office Action at page 10.

For at least the foregoing reasons, claims 3-11 are patentable over the cited references. Accordingly, withdrawal of the rejections of claims 3-5, 7 and 9-11 and rejoinder of claims 6 and 8 is hereby solicited.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,
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